

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Telepak Networks, Inc. d/b/a C Spire Fiber)	
)	
v.)	MB Docket No. 19-159
)	CSR-8978-C
Gray Media Group, Inc.)	
)	

To: Office of the Secretary
Attn: Media Bureau

ANSWER TO RETRANSMISSION CONSENT COMPLAINT

Gray Media Group, Inc. (“Gray”),¹ by counsel and pursuant to Sections 1.2 and 76.7(b) of the Commission’s Rules, hereby responds to the allegations made in the Retransmission Consent Complaint and Petition for Declaratory Ruling (“Complaint”) filed June 3, 2019 by Telepak Networks, Inc. d/b/a C Spire Fiber (“C Spire”).²

I. INTRODUCTION AND SUMMARY

C Spire’s Complaint is both untimely and utterly without merit. The central premise of C Spire’s Complaint—that Gray has refused or otherwise interfered with C Spire’s ability to negotiate a retransmission consent agreement for WLOX—is simply wrong. C Spire willingly entered into a retransmission consent agreement with Gray that

¹ C Spire’s Complaint named Gray Television Group, Inc. as the respondent. On May 1, 2019, Gray Television Group, Inc. merged into Gray Media Group, Inc.

² The instant response is limited to C Spire’s Retransmission Consent Complaint. The Commission has placed C Spire’s Petition for Declaratory Ruling on a separate pleading schedule. *See Clarification of the Ex Parte Status of, and Establishment of Comment Dates for, Telepak Networks, Inc.’s Petition for Declaratory Ruling*, MB Dkt. No. 19-159, DA 19-581 (rel. June 20, 2019).

governs the terms on which C Spire's Diamondhead system can retransmit the signal of Gray's WLOX(DT), Biloxi, Mississippi ("WLOX"). That agreement remains in effect for another year and a half. To the extent C Spire is unhappy with the terms it negotiated, C Spire has only itself to blame.

Not only did Gray not violate any duty to negotiate in good faith, but Gray went above and beyond the requirements of the FCC's rules and the parties' binding retransmission consent agreement to accommodate C Spire's request. As the emails attached to C Spire's Complaint demonstrate, Gray waived several terms of the parties' existing retransmission consent agreement to provide C Spire with access to: (1) Gray's primary ABC network stream in Biloxi, Mississippi (which broadcasts approximately 30 hours of locally-produced news and information programming each week); and (2) Gray's multicast CBS network stream in Biloxi, Mississippi; and (3) Gray's primary FOX network stream in New Orleans, Louisiana. The fact that Gray is enforcing a binding term in its retransmission agreement requiring C Spire to carry the local CBS affiliate serving the cable system's DMA simultaneously with its carriage of a multicast signal for Gray's out-of-DMA station does not raise an issue under the retransmission consent rules. At most, it reflects a private contractual dispute that should not involve the FCC.

In short, C Spire has failed to prove a violation by Gray of its duty to negotiate in good faith, and the Complaint should be promptly dismissed or denied.

II. BACKGROUND

Gray and Telapex, Inc. are parties to a Retransmission Consent Term Sheet effective as of January 1, 2015 and amended as of January 1, 2018 (the "*Retrans Agreement*"), that governs the terms upon which cable television systems owned by

Telapex and its affiliates, including C Spire, may retransmit the signals of television stations owned by Gray. In addition to providing the terms of C Spire's carriage of specified stations assigned to the same designated market area ("DMA") as one of C Spire's Systems, the *Retrans Agreement* also provides certain criteria for carriage by "a system serving Subscribers located outside a Station's designated market area."

Specifically, {BEGIN HIGHLY CONFIDENTIAL INFORMATION [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] END HIGHLY CONFIDENTIAL

INFORMATION}. The *Retrans Agreement* is valid and binding and remains effective as of the date of this filing.

On April 18, 2019, the FCC's Media Bureau issued a Memorandum Opinion and Order granting C Spire's Petition for Special Relief to modify the local markets of WLOX and WXXV-TV, Gulfport, MS, to include the community of Diamondhead,

Mississippi.³ The *Market Modification Order* required WLOX to elect retransmission consent or mandatory carriage within 30 days of the order’s release and reminded C Spire of its “obligation to commence carriage within 90 days of that election, unless the station(s) have elected retransmission consent and the parties have not agreed to carriage.”⁴

As C Spire has acknowledged, on May 1, 2019, WLOX’s VP/General Manager, Rick Williams, sent a letter to C Spire electing retransmission consent status for the remainder of the 2018-2020 election cycle.⁵ The letter explained that WLOX would be “added as a Station to that certain Retransmission Consent Term Sheet between [Gray] and Telapex as of the date of this letter.” In his transmittal email, Gray’s Vice President – Government Relations & Distribution, Robert J. Folliard, III, expressly consented to C Spire’s carriage of WLOX’s primary stream on the Diamondhead system “under the terms of the existing Gray/Telepex agreement.”⁶ Mr. Folliard also consented to Telepex’s carriage of Gray’s WVUE-TV in New Orleans, which was the in-DMA Fox network affiliate for C Spire’s Diamondhead system.

Although Gray exercised its option under the *Retrans Agreement* to consent to C Spire’s retransmission of WVUE-TV’s signal and the primary program stream for

³ See *Telepak Networks, Inc., d/b/a C Spire Fiber, For Modification of the Television Markets of Stations WLOX(DT), Biloxi, MS (Facility ID No. 13995) and WXXV-TV, Gulfport, MS (Facility ID No. 53517) to Include Diamondhead, MS*, Memorandum Opinion and Order, MB Docket No. 18-381 (MB Apr. 18, 2019) (the “*Market Modification Order*”).

⁴ *Id.* ¶ 19 & n. 58 (emphasis added).

⁵ See Exhibit 1. Although C Spire attached to its Complaint the email transmitting a courtesy copy of the letter, it did not attach the election letter itself.

⁶ See Compl. Ex. 1, email dated May 1, 2019 from Mr. Rob Folliard to Mr. Scott Friedman.

WLOX, Mr. Folliard explained that Gray could not grant consent for WLOX's multicast channel that carries programming from the CBS Television Network because "CBS prohibits its affiliates from granting any new out-of-DMA carriage" and "[t]he market mod does not change the Nielsen boundaries for the Biloxi-Gulfport DMA."⁷ While the *Market Modification Order* makes Diamondhead part of WLOX's local market for purposes of electing must-carry status, it does not change the terms of the privately negotiated network agreement between Gray and CBS or the terms of the *Retrans Agreement* between Gray and C Spire, which both refer to designated market areas as defined by Nielsen.⁸

⁷ See *id.*

⁸ Although the market modification placed Diamondhead inside WLOX's market for the purpose of must carry and retransmission consent, the scope of a market modification is limited. See *In the Matter of: Authorizing Permissive Use of the Next Generation Broad. Television Standard*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd. 9930 ¶ 74 n. 211(2017) (explaining that a "[m]arket modification is a process established by statute that allows the Commission to modify the boundaries of a particular full power commercial station's local television market assignment for cable or satellite carriage purposes") (emphasis added). It is well established that the Commission's definition of a local market is distinct from Nielsen's definition of a designated market area. See, e.g., *In the Matter of Designated Mkt. Areas: Report to Cong.*, 31 FCC Rcd. 5463 (2016) (explaining that the market modification process "can be used to avoid rigid adherence to Nielsen's DMA assignments"); *In the Matter of Petition for Modification of Dayton, OH Designated Market Area with Regard to Television Station WHIO-TV, Dayton, OH*, 28 FCC Rcd. 16011 (MB 2013) (explaining that "the purpose of market modification is to determine a station's market based on an analysis of certain statutory and other factors, a process distinct from that which Nielsen performs to determine its DMA assignments") (citing 47 U.S.C. § 534(h)(1)(C)); *In the Matter of Definition of Markets for Purposes of the Cable Television Broad. Signal Carriage Rules*, Order on Reconsideration and Second Report and Order, 14 FCC Rcd. 8366 ¶ 37 (1999) (explaining that for FCC purposes "where a broadcast station is dissatisfied with a final market modification decision issued by the Commission, and then successfully petitions Nielsen to change its market-of-origin in response to the Commission's adverse decision, the Commission's market modification decision remains controlling"). Accordingly, the market modification did not change the Nielsen designated market area that governs both the *Retrans Agreement* and Gray's CBS affiliation agreement.

By email dated May 3, 2019, C Spire’s counsel, Scott Friedman, requested that Gray “ask CBS to waive the prohibition and permit you to grant consent to Telapex to retransmit WLOX’s CBS feed in Diamondhead.”⁹ Gray immediately reached out by email to CBS and followed up with two separate phone calls seeking CBS’s approval to allow C Spire to retransmit WLOX’s multicast stream on C Spire’s Diamondhead system. Gray’s efforts culminated in a May 14, 2019, email from Mr. John W. Bagwell of CBS authorizing Gray to grant retransmission consent to C Spire’s Diamondhead system “provided that such new distribution is pursuant to the terms of WLOX’s Network Affiliation Agreement, including the simultaneous retransmission of the CBS affiliate licensed to the New Orleans DMA” (to which Hancock County, where Diamondhead is located, is still assigned).¹⁰ Gray promptly forwarded this email to Mr. Friedman expecting that C Spire would agree this was excellent news. To the best of Gray’s knowledge, CBS had never before waived its contractual prohibition to allow a CBS affiliate on a multicast channel to grant retransmission consent on a system located outside the station’s DMA in an area where the multicast channel had *no history of cable or satellite carriage*.

Rather than take “yes” for an answer, however, C Spire replied with a threat to file a complaint with the FCC on the basis that, according to Mr. Friedman, “conditioning carriage of WLOX’s CBS feed on the carriage of another station violates the FCC’s

⁹ See Compl. Ex. 1, email dated May 3, 2019 from Mr. Scott Friedman to Mr. Rob Folliard.

¹⁰ See Compl. Ex. 1, email dated May 14, 2019 from Mr. Rob Folliard to Mr. Scott Friedman.

retransmission good faith negotiation rules.”¹¹ In particular, Mr. Friedman cited Section 103(b) of STELAR (as codified in Section 76.65(b)(1)(ix) of the Commission’s rules), which prohibits a broadcaster from imposing any limitations on the ability of an MVPD to import into the station’s local market a television station that is significantly viewed or that an MVPD is otherwise required to carry under the Commission’s must carry rules.¹² Mr. Folliard provided a detailed response explaining why C Spire’s interpretation of STELAR was incorrect and why Section 103(b) of STELAR did not require Gray to unconditionally allow C Spire to retransmit WLOX’s multicast stream. As Mr. Folliard explained:

The language in STELAR does not – as you suggest – prohibit Gray from including conditions on carriage of its own station in its own local market. In fact, that is what every retransmission consent agreement does. Our retransmission agreements have dozens of carriage conditions, including multicast carriage obligations, channel position obligations, basic tier obligations, payment obligations, downconversion and nondegradation obligations, compliance with Copyright Act obligations, etc. If Telepex did not want to comply with any of those obligations, that necessarily would limit your client’s ability to carry WLOX in its local market in areas where the station i[s] SV. Plainly, Section 103(b) does not make all of those carriage conditions that are found in every retransmission agreement illegal. Yet, your interpretation of Section 103(b) would completely swallow the retransmission consent rights of broadcasters in Section 325(b).¹³

Nevertheless, C Spire persisted with its threat to file a “Retransmission Consent Good Faith Complaint and Petition for Declaratory Ruling” unless Gray could convince CBS to

¹¹ See Compl. Ex. 1, email dated May 15, 2019 from Mr. Scott Friedman to Mr. Rob Folliard.

¹² STELA Reauthorization Act of 2014, Pub. L. No. 113-200, 128 Stat. 2059, § 103(b) (2014) (“STELAR”); *Implementation of Sections 101, 103, and 105 of the STELA Reauthorization Act of 2014*, 30 FCC Rcd. 2380 (2015) (codifying Section 103(b) as 47 C.F.R. § 76.65(b)(1)(ix)).

¹³ See Compl. Ex. 1, email dated May 17, 2019 from Mr. Rob Folliard to Mr. Scott Friedman.

“permit Gray to grant consent to C Spire to retransmit WLOX’s CBS multicast feed without condition.”¹⁴ In an effort to avoid an unnecessary drain on the Commission’s resources, Mr. Folliard attempted, once again, to explain that C Spire’s complaint could not succeed because: (1) the parties had a valid retransmission consent agreement, which belies any notion that Gray failed to negotiate in good faith; and (2) Gray agreed to amend those provisions of the existing retransmission consent agreement that are within its control and the amendment of which would not cause Gray to breach its own network affiliation agreements.¹⁵

In a further demonstration of its good faith, on June 3, 2019, Gray once again sought CBS’s authorization for Gray to allow C Spire to retransmit WLOX’s CBS multicast stream without simultaneously retransmitting the CBS affiliate licensed to the New Orleans DMA.¹⁶ In response, CBS reaffirmed its prior position that it would allow Gray to consent to C Spire’s carriage of the WLOX CBS multicast stream on the Diamondhead system, but only “pursuant to the terms of the station’s CBS Network Affiliation Agreement, including the simultaneous retransmission of WWL-TV, the CBS affiliate licensed to the New Orleans DMA.”¹⁷ Gray immediately shared CBS’s response with C Spire. Less than an hour later, C Spire filed its Complaint.

¹⁴ See Compl. Ex. 1, email dated May 30, 2019 from Mr. Scott Friedman to Mr. Rob Folliard.

¹⁵ See Exhibit 2, email dated May 30, 2019 from Mr. Rob Folliard to Mr. Scott Friedman. C Spire did not include this response with the correspondence it attached to the Complaint.

¹⁶ See Exhibit 3, email dated June 3, 2019 from Mr. Rob Folliard to Mr. John Bagwell.

¹⁷ See Exhibit 3, email dated June 3, 2019 from Mr. John Bagwell to Mr. Rob Folliard.

III. THE COMMISSION SHOULD DISMISS THE COMPLAINT AS UNTIMELY FILED.

C Spire's complaint is untimely because it was filed more than one year after C Spire and Gray entered into the *Retrans Agreement*. Pursuant to Section 76.65(e) of the Commission's rules, a retransmission consent complaint must be filed within one year of the date on which:

- A complainant enters into a retransmission agreement with a television station that the complainant alleges to violate one or more rules;
- A television station or MVPD engages in retransmission consent negotiations that the complainant alleges to violate one or more of the rules and such negotiation is unrelated to any existing contract; or
- The complainant has notified the television station or MVPD that it intends to file a complaint based on a request to negotiate retransmission consent that has been denied, unreasonably delayed or unacknowledged.¹⁸

Here: (1) the parties entered into an initial retransmission consent agreement effective January 1, 2015 and a renewal effective January 1, 2018; (2) the *Retrans Agreement* includes terms that govern C Spire's retransmission of WLOX on C Spire's newly constructed Diamondhead system; and (3) as explained below, any request by C Spire to renegotiate the existing agreement was improper and does not constitute a "request to negotiate retransmission consent" under the Commission's rules.¹⁹

¹⁸ 47 C.F.R. § 76.65(e) (emphasis added).

¹⁹ C Spire's suggestion that its untimely request to renegotiate the parties' existing retransmission consent agreement falls within subpart (iii) would render the rule's one year limitation moot because any party can request to renegotiate an existing contract at any time. The Commission is duty-bound to interpret its rules in a manner that gives meaning to each provision and avoids rendering an accompanying provision moot. *See*

C Spire did not file its complaint until June 3, 2019—well over a year after the parties entered into the *Retrans Agreement* or the renewal thereof. Accordingly, C Spire filed its Complaint after the time limit specified in the FCC’s rules, and the Commission should dismiss the Complaint as untimely.

IV. THE COMMISSION SHOULD DENY THE COMPLAINT ON THE MERITS.

To the extent the Commission nevertheless elects to review the Complaint on the merits, C Spire has not satisfied and cannot satisfy its burden to demonstrate that Gray has failed to negotiate in good faith. The FCC’s rules are unambiguous that in any complaint proceeding relating to the Commission’s retransmission consent rules, “the burden of proof as to the existence of a violation shall be on the complainant.”²⁰ Here, C Spire has failed to establish a *prima facie* case, much less prove, either that: (1) Gray had any duty to reopen and renegotiate the terms of the existing retransmission consent agreement between the parties; and (2) Gray failed to satisfy whatever duty it may have had. More fundamentally, *C Spire has Gray’s consent to retransmit WLOX’s CBS-affiliated multicast stream today*. C Spire, however, has decided to not exercise that right because, for its own reasons, it does not wish to comply with a provision in the *Retrans Agreement* requiring that it simultaneously retransmit the in-DMA (and “local” under FCC’s rules²¹) CBS affiliate from New Orleans, WWL-TV.

Potter v. United States, 155 U.S. 438, 446 (1894) (the presence of statutory language “cannot be regarded as mere surplusage; it means something”); *Yates v. United States*, 135 S. Ct. 1074, 1085 (2015) (“[T]he canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.”) (quoting *Marx v. General Revenue Corp.*, 133 S. Ct. 1166 (2013)).

²⁰ 47 C.F.R. § 76.65(d).

²¹ See 47 C.F.R. §§ 76.55(c) & 76.55(e)(2) (defining a local commercial television station as a station that is assigned to the same DMA as defined by Nielsen). Although C Spire

Indeed, the Complaint is not about *negotiation* at all, but instead reflects an attempt by C Spire to force Gray to *reopen* and *renegotiate* the valid and binding agreements that C Spire voluntarily negotiated and entered into in 2015 and amended in 2018. C Spire's silence regarding the parties' existing agreement is particularly striking given that the plain language of the agreement: {**BEGIN HIGHLY CONFIDENTIAL INFORMATION** [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] **END HIGHLY CONFIDENTIAL**

INFORMATION}. Under these circumstances, the Complaint is nothing more than a contractual dispute in disguise, and longstanding precedent recognizes that there is no place for Commission involvement.²² The FCC should deny the Complaint on this basis alone.

In any event, as Gray previously advised C Spire, C Spire's specific allegations of bad faith negotiation arise from misinterpretations of the applicable statutes and rules and must be rejected. First, the FCC's rules prohibit a broadcast television station from limiting the ability of an MVPD to carry *another* station; they do not, as C Spire argues, prevent a broadcaster from imposing conditions on carriage of its own station. Second, nothing in the FCC's rules require Gray to renegotiate the already agreed upon terms for

modified its market to add WLOX to its "local" market, it did not seek to remove WWL-TV.

²² See, e.g., *Listeners' Guild, Inc. v. FCC*, 813 F.2d 465, 469 (D.C. Cir. 1987) (endorsing "the Commission's longstanding policy of refusing to adjudicate private contract law questions"); *John F. Runner, Receiver*, 36 R.R.2d 773, 778 (1976) (local court of competent jurisdiction, not the FCC, is the proper forum to resolve private disputes).

out-of-market carriage as set forth in the existing *Retrans Agreement* with C Spire – especially when those existing terms give C Spire consent to retransmit WLOX’s multicast signal as long as it simply retransmits the CBS programming from WWL-TV . Accordingly, C Spire cannot prove that Gray violated the retransmission consent rules.

A. Section 76.65(b)(1)(ix) Does Not Prevent a Broadcaster From Imposing Conditions on Retransmission of the Broadcaster’s Own Station.

C Spire’s overly restrictive interpretation of Section 76.65(b)(1)(ix) as limiting the ability of a broadcaster to place conditions on retransmission of its own station is contrary to the plain language of the rule, Congressional intent, and the overall effectiveness of the retransmission consent regime. Under the rule, it is a *per se* violation of the duty to negotiate in good faith for a broadcast television station to impose:

limitations on the ability of a multichannel video programming distributor to carry into the local market (as defined in 17 U.S.C. 122(j)) of such station a television signal that has been deemed significantly viewed, within the meaning of §76.54 of this part, or any successor regulation, or any other television broadcast signal such distributor is authorized to carry under 47 U.S.C. 338, 339, 340 or 534, unless such stations are directly or indirectly under common de jure control permitted by the Commission.²³

C Spire’s contention that this provision obligates Gray to permit C Spire to retransmit Gray’s WLOX on its Diamondhead system without conditions is mistaken.

1. C Spire’s Argument is Contrary to the Plain Language of Section 76.65(b)(1)(ix).

There are at least three reasons why C Spire’s interpretation of Section 76.65(b)(1)(ix) is inconsistent with the plain text of the rule.

First, C Spire incorrectly asserts that – because the FCC granted the *Market Modification Order* – Section 614 authorizes C Spire to carry WLOX, as a result, Section

²³ 47 C.F.R. § 76.65(b)(1)(ix).

76.65(b)(1)(ix) applies, and Gray cannot impose any limitation on C Spire’s right to carry WLOX. That is incorrect: Section 614 only provides authorization to stations that have elected must carry.²⁴ Moreover, Section 614 does not authorize an MVPD to retransmit a multicast program stream.²⁵ The fact that the FCC granted the *Market Modification Order* adding Diamondhead to WLOX’s local television market is irrelevant. Gray elected retransmission consent status for WLOX in Diamondhead. Therefore, Section 614 does not authorize C Spire to carry WLOX, and even if Gray had elected must carry, Section 614 still would not apply to WLOX’s CBS-affiliated multicast stream.

Second, the plain language of Section 76.65(b)(1)(ix) makes clear that it only prohibits a broadcaster from limiting an MVPD from retransmitting a station owned by another broadcaster. C Spire omits the express carve out in Section 76.65(b)(1)(ix) for “stations . . . directly or indirectly under common de jure control permitted by the Commission.” In other words, Section 76.65(b)(1)(ix) only prohibits a broadcaster from using retransmission consent to prohibit the carriage of another broadcaster’s significantly viewed or must-carry station. By its very terms, this section does not apply to a station controlled by the broadcaster itself. Because Gray is the licensee of WLOX, this section plainly does not apply to conditions Gray places on the carriage of WLOX (or WVUE or any other station owned by Gray).

²⁴ 47 U.S.C. § 325(b)(4) (“If an originating television station elects . . . to exercise its right to grant retransmission consent under this subsection with respect to a cable system, the provisions of Section 534 of this title shall not apply to the carriage of the signal of such station by such cable system.”). Section 614 of the Communications Act is codified as 47 U.S.C. § 534.

²⁵ *In the Matter of: Carriage of Digital Television Broadcast Signals: Amendments to Part 76 of the Commission’s Rules*, 20 FCC Rcd. 4516 ¶ 33 (2005) (concluding that Section 614 does not apply to multicast streams).

Third, Section 76.65(b)(1)(ix) does not apply to carriage of a signal considered part of the same local market under the FCC’s rules. Specifically, the prohibition in Section 76.65(b)(1)(ix) applies to limitations on the ability of an MVPD “to carry *into* the local market” a significantly viewed signal.²⁶ As C Spire admits, “WLOX’s local market under the Communications Act now includes Diamondhead.”²⁷ Put another way, as a result of the market modification, there is no signal for C Spire to “carry into the local market.” Any condition on C Spire’s carriage of WLOX applies merely to retransmission within the market as defined under the FCC’s rules, providing another independent reason why Section 76.65(b)(1)(ix) does not apply.

2. C Spire’s Reliance on the Legislative History of Section 76.65(b)(1)(ix) is Misplaced.

Not only does C Spire’s argument that the Congress intended to preclude a broadcaster from placing conditions on the carriage of its own station contradict the actual language of STELAR, but it also ignores contrary language in the Senate report itself.

As an initial matter, for the reasons explained above in Section A.1, above, the plain text of STELAR does not support and directly contradicts C Spire’s interpretation. Where the statutory language is unambiguous, it would be improper for the Commission to look beyond the plain meaning of the text.²⁸

²⁶ *Id.* (emphasis added). This rule prevents a broadcaster from using retransmission consent to prevent an MVPD from importing from another market a competing signal that is significantly viewed. It does not govern negotiation for carriage of a station in the same local market.

²⁷ Complaint at 14.

²⁸ *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 843 (1984) (where Congress has directly spoken to the question at issue, the FCC “must give effect to the unambiguously expressed intent of Congress”); *Henson v. Santander Consumer USA*

Yet, even if the statute were ambiguous – which it is not – the very Senate report upon which C Spire relies disproves C Spire’s argument that Congress intended to preclude a broadcaster from placing conditions on the carriage of its own station. C Spire’s quotation of a Report of the Committee on Commerce, Science and Transportation omits the Committee’s statement that “[t]his prohibition does not apply to stations that are directly or indirectly under common de jure control permitted under the FCC’s regulations.”²⁹ C Spire also excludes the Committee’s statement that it “does not intend . . . for this provision to alter, expand, or otherwise change what broadcast television station signals a satellite carrier or cable operator is permitted to carry under the Communications Act.”³⁰ Taken together, these statements clearly evince Congress’ intent not to interfere with the right of a broadcaster under Section 325 of the Communications Act to control the terms upon which an MVPD may carry its signal.

3. C Spire’s Interpretation of Section 76.65(b)(1)(ix) Would Undermine the Retransmission Consent Regime.

If the Commission adopted C Spire’s interpretation of Section 76.65(b)(1)(ix), it would deny licensees the opportunity to negotiate for retransmission consent. A typical retransmission consent agreement will include dozens of conditions upon the broadcaster’s consent to retransmit its station’s signal, including the requirement for compensation, restrictions on where the MVPD can retransmit the station’s signal,

Inc., 137 S. Ct. 1718, 1721 (2017) (“[W]e begin, as we must, with a careful examination of the statutory text.”); *Ross v. Blake*, 136 S. Ct. 1850, 1856 (2016) (“Statutory interpretation, as we always say, begins with the text”); *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 572 U.S. 545, 554 (2014) (“Our analysis begins and ends with the text of [the disputed statute] This text is patently clear.”).

²⁹ S. 2799 Rep No. 113-322 at 14 (2014).

³⁰ *Id.*

obligations to retransmit a program stream in its entirety without inserting different programming or commercials, prohibitions against materially degrading the picture quality, requirements to preserve Nielsen watermarks, audit rights, indemnification language, etc. Taken to its logical extreme, C Spire's interpretation would preclude a broadcaster from imposing these or any other conditions on the retransmission of its signal on any cable system retransmitting its signal within a station's local television market. This is clearly not what Congress intended when it directed the FCC to adopt regulations prohibiting broadcast station from limiting the ability of an MVPD to carry a significantly viewed signal into the local market of such station.

For each of the foregoing reasons, the FCC should reject C Spire's improper interpretation of Section 76.65(b)(1)(ix) and find that this section only applies to a broadcaster's attempt to impose conditions upon the carriage of another broadcaster's signal.

B. Gray Went Above and Beyond Any Obligation It May Have Had to Negotiate with C Spire.

Although Gray was under no obligation to renegotiate its existing *Retrans Agreement* with C Spire for carriage of WLOX's CBS multicast stream, Gray nevertheless went above and beyond its duties under the retransmission consent agreement to provide C Spire with an option to carry that stream.

As an initial matter, C Spire's reliance on Sections 76.65(b)(1)(i) and (iv) of the Commission's rules is misplaced. Section 76.65(b)(1)(i) provides that it is a failure to negotiate in good faith to refuse to negotiate retransmission consent while Section 76.65(b)(1)(i) provides that it is a failure to negotiate in good faith to refuse to put forth

more than a single unilateral proposal.³¹ These rules assume that the broadcaster and MVPD have not already entered into a binding retransmission consent agreement. In the instant case, however, C Spire does not dispute that it entered into a binding retransmission consent agreement with Gray and that the terms of that agreement govern C Spire's retransmission of WLOX. The Commission has made clear that it will not "abrogate a bargained-for and agreed-to contractual provision between a broadcaster and [MVPD]" that extends a retransmission consent agreement to a community added through the market modification process.³²

Even if the Commission's good faith rules required a broadcaster to immediately reopen and renegotiate any agreement upon the mere request of an MVPD (which they do not), Gray still met its obligations under the Commission's rules. As the Commission has made clear on multiple occasions, the good faith rules do not require that the parties ultimately reach an agreement.³³ Even if both sides exercise the utmost good faith and have every desire to reach a mutually acceptable agreement, a solution still may not be possible. Instead, if a party rejects a proposal from the other party, the good faith rules

³¹ 47 C.F.R. §§ 76.65(b)(i) & (iv).

³² See *In the Matter of Amendment to the Commission's Rules Concerning Mkt. Modification*, Report and Order, 30 FCC Rcd. 10406 ¶ 28 (2015). The Commission has expressed particular care not to adopt positions in the context of market modifications that would "unduly upset the economic marketplace expectations underlying the affiliation concept." *In the Matter of: Pac. & S. Co., Inc.*, Memorandum Opinion and Order, 14 FCC Rcd. 4558 ¶ 25 (MB1999); *In the Matter of: Guy Gannett Commc'ns, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd. 23470 ¶ 21 (MB 1998) ("Portland Decisions").

³³ *Coastal Television Broad. Co. LLC v. MTA Comm., LLC, Good Faith Negotiations Complaint*, 33 FCC Rcd. 11025 ¶ 7 (2018) ("Coastal Order").

require the party provide reasons for rejecting the offer.³⁴ If a broadcaster cites a provision in its network affiliation agreement as a reason for rejecting a proposal, the broadcaster must be willing to request a waiver of the provision from its network if asked.³⁵

Gray easily satisfied these good faith obligations. At the outset, Gray explained that it could not grant consent for its CBS-affiliated multicast stream because of restrictions in its network affiliation agreement. When C Spire asked that Gray request a waiver of this restriction, Gray sought and received a waiver from CBS. When C Spire was not satisfied with the conditions that CBS attached to its waiver, Gray again contacted CBS and requested that CBS reconsider including the conditions. Throughout the process, in multiple emails and phone conversations with C Spire's counsel, Gray was fully transparent and kept C Spire informed of its progress.

Gray took every action within its power to ensure that C Spire's new cable system in Diamondhead would be successful and have access to Gray's top-rated programming. Gray immediately confirmed to C Spire that it had consent to retransmit each program stream within WVUE's signal, including WVUE's FOX affiliated program stream, which is the flagship home of the New Orleans Saints. Gray also confirmed that it had consent to retransmit WLOX's ABC-affiliated program stream. For decades WLOX's ABC program stream has been the top-rated, most-watched channel in the Biloxi, Mississippi market, and its local news programming is the most watched local news in southern

³⁴ *Implementation of the Satellite Home Viewer Improvement Act of 1999: Retransmission Consent Issues*, 15 FCC Rcd. 5445, 5464 (2000), recon. granted in part, 16 FCC Rcd. 15599 (2001); *Coastal Order* at ¶ 10.

³⁵ *In the Matter of: Implementation of Section 207 of the Satellite Home Viewer Extension and Reauthorization Act of 2004: Reciprocal Bargaining Obligation*, 20 FCC Rcd. 10339 ¶ 35 (2005).

Mississippi and among the highest-rated local newscasts in the country. To grant consent to retransmit WLOX's ABC affiliated program stream on the Diamondhead system, Gray voluntarily waived the requirement in the *Retrans Agreement* that C Spire {BEGIN
HIGHLY CONFIDENTIAL INFORMATION [REDACTED]
[REDACTED] **END HIGHLY CONFIDENTIAL INFORMATION}**.³⁶

Gray also secured a waiver from CBS permitting C Spire to retransmit WLOX's CBS programming if C Spire also simultaneously retransmitted WWL-TV. Consequently, Gray agreed that C Spire would have consent to retransmit WLOX's CBS-affiliated multicast stream if it complied with CBS's condition, and Gray voluntarily waived the provision in the *Retrans Agreement* {BEGIN **HIGHLY CONFIDENTIAL INFORMATION** [REDACTED]
END HIGHLY CONFIDENTIAL INFORMATION}.³⁷ In all, C Spire's claim that Gray was unreasonably inflexible and put forth one unilateral proposal is belied by the facts.

Ultimately, all relevant participants – C Spire, Gray, and CBS – acted reasonably and demonstrated through their actions that they sincerely desired to reach a mutually agreeable arrangement, but C Spire was unwilling to agree to retransmit WWL-TV as a condition of retransmitting WLOX's multicast channel. CBS has a reasonable interest in protecting the rights of its affiliates across more than 200 different television markets. Diamondhead is within the local television market for both WLOX and WWL-TV, and

³⁶ Gray's ABC affiliation agreement allows Gray to grant consent in Diamondhead, Mississippi without regard to whether the MVPD also retransmits the in-DMA affiliate.

³⁷ Although Gray waived the out-of-DMA multicast carriage provision, Gray did not waive the provision in the *Retrans Agreement* requiring that any carriage outside a station's DMA must be consistent with the terms of Gray's network affiliation agreement.

CBS has every right to protect the interests of its other local affiliate also serving Diamondhead.³⁸ The simultaneous carriage provision is appropriately tailored toward that interest. Gray has the right to enter into retransmission consent agreements that do not violate the terms of its network affiliation agreements with one of its most important partners, and Gray's insistence on enforcing the simultaneous carriage obligation is appropriately tailored toward that interest. Meanwhile, C Spire desires to only retransmit a CBS affiliate based in Mississippi. The fundamental tension among the competing interests of all three participants has made carriage of WLOX's multicast channel not possible, but that failure is not evidence of bad faith.

Regardless, whether the Commission applies the good faith standards for stations located in the same DMA as a cable system or the lesser standards for stations located beyond the DMA, Gray fully satisfied its obligations.

V. CONCLUSION

For the foregoing reasons, the Commission should dismiss the Complaint as untimely filed or deny the Complaint for failure to prove that Gray violated its duties under Section 325 of the Communications Act or Section 76.65 of the FCC's Rules.

³⁸ The Commission has expressed particular care not to adopt positions in the context of market modifications that would "unduly upset the economic marketplace expectations underlying the affiliation concept." *In the Matter of: Pac. & S. Co., Inc.*, Memorandum Opinion and Order, 14 FCC Rcd. 4558 ¶ 25 (MB1999); *In the Matter of: Guy Gannett Commc'ns, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd. 23470 ¶ 21 (MB 1998) ("Portland Decisions").

Respectfully submitted,

GRAY MEDIA GROUP, INC.

By: _____/s/
Joan Stewart
Ari Meltzer
of
WILEY REIN LLP
1776 K Street, NW
Washington, DC 20006
(202) 719-7000
Its Attorneys

Dated: June 24, 2019

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Telepak Networks, Inc. d/b/a C Spire Fiber)	
)	
v.)	MB Docket No. 19-159
)	CSR-8978-C
Gray Media Group, Inc.)	
)	

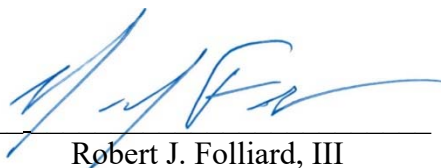
DECLARATION OF ROBERT J. FOLLIARD, III

I, Robert J. Folliard, hereby declare as follows:

1. I am Vice President, Government Relations & Distribution, of Gray Media Group, Inc.
2. I have read the attached "Answer to Retransmission Consent Complaint" and believe the information to be true and accurate in all respects.

I, Robert J. Folliard, III, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed on June 24, 2019.


Robert J. Folliard, III

CERTIFICATE OF SERVICE

I, Ari Meltzer, hereby certify that on this 24th day of June, 2019, I caused the foregoing "Answer to Retransmission Consent Complaint" to be electronically transmitted to the following with a copy to be mailed via first class postage prepaid mail:

Scott Friedman
Bruce Beard
Kelsey Rejko
Cinnamon Mueller
1714 Deer Tracks Trail
Suite 230
St. Louis, MO 63131

/s/
Ari Meltzer

EXHIBIT 1



208 Debuys Road

Biloxi, Mississippi 39531

228.896.1313

Fax 228.896.0749

wlox.com

BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED # 7017066000043983815

May 1, 2019

Cable One, Inc.
210 E. Earll Drive
Phoenix, AZ 85012
Attn: Vice President, Southeast Division

RE: Election of Retransmission Consent Status for WLOX, Biloxi, MS, located in the Biloxi-Gulfport DMA ("Station")

To Whom It May Concern:

Congratulations on the recent FCC decision modifying the local television market of WLOX(DT) to include Diamondhead, Mississippi (the "Community"). Raycom Media Licensee, LLC, successor-by-merger to WLOX License Subsidiary, LLC (collectively "Licensee") and licensee of Station, hereby gives notice to Cable One, Inc. ("Cable One") that, pursuant to Section 325(b)(3)(B) of the Communications Act and Section 76.64(f)(2) of the FCC's rules, Licensee elects retransmission consent status for the Station in the Community. Accordingly, pursuant to Section 325(b)(1)(A) of the Communications Act and Section 76.64(a) of the FCC's rules, the Station's broadcast signal may not be carried on your cable system(s) or other distribution systems that you own, operate, or manage without Licensee's express written consent pursuant to a retransmission consent agreement. The election of retransmission consent is for the period from the date on which your system(s) begins service in the Community through December 31, 2020.

An affiliate of Gray Television Group, Inc. ("GTG") acquired Station as of January 2, 2019. As a result, GTG now has authority to grant retransmission consent for Licensee. Licensee shall therefore be added as a Station to that certain Retransmission Consent Term Sheet between GTG and Cable One as of the date of this letter.

Please feel free to reach out should you have any questions or concerns.

Sincerely,

A handwritten signature in blue ink, appearing to read "Rick Williams".

Rick Williams
VP/General Manager


SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY																	
<p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Signature X</p> <p><input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>																	
<p>1</p> <p>Cable One, Inc. 210 E. Earll Drive Phoenix, AZ 85012 Attn: Vice President, Southeast</p>  <p>9590 9402 4196 8121 7380 71</p>		<p>B. Received by (<i>Printed Name</i>)</p> <p>C. Date of Delivery</p>																	
<p>2. Article Number (<i>Transfer from service label</i>)</p>		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>																	
		<p>3. Service Type</p> <table border="0"> <tr> <td><input type="checkbox"/> Adult Signature</td> <td><input type="checkbox"/> Priority Mail Express®</td> </tr> <tr> <td><input type="checkbox"/> Adult Signature Restricted Delivery</td> <td><input type="checkbox"/> Registered Mail™</td> </tr> <tr> <td><input checked="" type="checkbox"/> Certified Mail®</td> <td><input type="checkbox"/> Registered Mail Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail Restricted Delivery</td> <td><input type="checkbox"/> Return Receipt for Merchandise</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery</td> <td><input type="checkbox"/> Signature Confirmation™</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery Restricted Delivery</td> <td><input type="checkbox"/> Signature Confirmation Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Insured Mail</td> <td></td> </tr> <tr> <td><input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</td> <td></td> </tr> </table>		<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®	<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™	<input checked="" type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery	<input type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Return Receipt for Merchandise	<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation™	<input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery	<input type="checkbox"/> Insured Mail		<input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)	
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<input type="checkbox"/> Insured Mail																			
<input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)																			

EXHIBIT 2

Meltzer, Ari

From: robert.folliard@gray.tv
Sent: Thursday, May 30, 2019 7:16 PM
To: Scott Friedman
Subject: Re: Telepex/Diamondhead, MS: Gray Television Election Letter

Scott

Thanks for the heads up. I will check in with CBS to see if they are willing under the circumstances to waive the simultaneous carriage provision in our affiliation agreement in addition to having already waived the “no new out of DMA carriage” provision. I hope to have an answer tomorrow, so it will be in advance of any filing you might make early next week with the FCC.

As I think you know, we would be very happy if C-Spire could carry our CBS multicast from WLOX-TV. I would hope that the speed and ease at which we provided consent on the ABC side would demonstrate our willingness to work cooperatively with you and your client. That said, as I am sure you already appreciate, ultimately, we are at the mercy of CBS. Our CBS affiliation agreement (and most network affiliation agreements) refer to Nielsen DMAs. They do not refer to FCC market modifications that redefine a station’s “local market” as defined in the Communications Act. As you know, only Nielsen can adjust a DMA boundary.

With all of that said, I do not think a good faith complaint will be successful. First, as a threshold matter, we have a valid retransmission agreement, which was extended last year for another three years. From a procedural standpoint, I don’t see how the FCC would act on a failure to negotiate claim when we actually did successfully negotiate an agreement in December 2014 and then successfully negotiated a 3 year extension of that agreement in December of 2017. Instead, it seems your claim is actually a failure to re-open and revise provisions that were previously agreed to (twice). At a minimum, that would put your complaint in a unique procedural posture.

Also, it would not be accurate to say that Gray has been unwilling to revise provisions of its agreement even though the agreement will not expire for another year and a half. Second 5 of our Agreement contains three relevant provisions:

- First, Section 5 includes a blanket prohibition on any carriage of a multicast channel outside a station’s DMA. As you may know, multicast affiliation agreements almost universally prohibit out-of-DMA carriage. For this reason we include this blanket ban in our retransmission agreements but we are always willing to reconsider the blanket ban in appropriate circumstances. As should be obvious, Gray is willing to amend that provision to allow carriage of WLOX-TV’s CBS multicast on the Diamondhead system provided certain other conditions are met.
- Second, Section 5 includes a prohibiting carriage of a program stream outside a station’s DMA unless the system also carries the in-DMA affiliate. Gray also is willing to amend this provision. As I understand it, C-Spire is not planning to retransmit the New Orleans ABC affiliate. At no time have we raised this issue. Instead, we have agreed to waive this language with respect to our ABC affiliate.
- Third, Section 5 includes language saying that we only grant consent for a program stream on an out-of-DMA system if the grant is consistent with our affiliation agreement. This is the language we have been unwilling to re-open or reconsider. It is not unreasonable for us to insist that a retransmission contract not put us in material breach of another contract.

All in all, we have been willing to amend 2 out of the 3 provisions in Section 5 that are relevant here. And, most-importantly, we are not prohibiting C-Spire from carrying WLOX’s CBS. If C-Spire will carry WWL, it can carry WLOX-D2.

Bottom line, assuming the FCC is even willing to consider a good faith complaint when the parties have a signed and valid retransmission agreement, I don’t see how the FCC finds a good faith violation given everything we have done to first ensure that WLOX-D1 is carried and try to get WLOX-D2 also carried.

Regardless, I will check back in with CBS and see whether their views have changed and I will also again let them know that we do indeed want to be in this system. I'll let you know as soon as I hear back.

-Rob



Robert J. Folliard, III

Gray Television, Inc.

Vice President – Government Relations & Distribution

4370 Peachtree Road, NE

Atlanta, GA 30319

Phone: 202.750.1585

Email: robert.folliard@gray.tv

Website: www.gray.tv

From: "sfriedman@cinnamonmueller.com" <sfriedman@cinnamonmueller.com>

Date: Thursday, May 30, 2019 at 2:29 PM

To: Rob Folliard <Robert.Folliard@gray.tv>

Subject: Re: Telepex/Diamondhead, MS: Gray Television Election Letter

Rob:

Just wanted to follow up on our conversation last Friday. As I explained, C Spire is prepared to file a Retransmission Consent Good Faith Complaint and Petition for Declaratory Ruling next week on these issues. In short:

- As a result of the market modification grant, the FCC has deemed WLOX a local station in Diamondhead.
- Since C Spire is now authorized to retransmit WLOX under Section 534, any "limitation" on C Spire carrying WLOX's CBS feed in Diamondhead, including a requirement that C Spire also carry the New Orleans CBS feed, constitutes a *per se* violation under the Commission's new rule implemented via STELAR.
- Also, now that WLOX is "local" in Diamondhead, WLOX is subject to more rigorous in-market retransmission consent negotiation requirements under the FCC's rules. Gray cannot, as it has done so here, solely request that CBS waive its restriction on out-of-market carriage (since the station is now in-market under Section 534). Not negotiating further is a refusal to negotiate retransmission consent and a refusal to put forth more than a single, unilateral proposal, both *per se* violations.

C Spire, of course, would like to avoid filing with the FCC and requests that you speak with CBS again and see if they will permit Gray to grant consent to C Spire to retransmit WLOX's CBS multicast feed without condition.

Thanks again for your help.

Regards,

Scott Friedman

Cinnamon Mueller

1714 Deer Tracks Trail, Suite 230

St. Louis, MO 63131

(314) 462-9000 (office)

(608) 469-3596 (cell)

sfriedman@cinnamonmueller.com



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From: Robert Folliard <Robert.Folliard@gray.tv>
Date: Friday, May 17, 2019 at 10:10 AM
To: Scott Friedman <sfriedman@cinnamonmueller.com>
Subject: Re: Telepex/Diamondhead, MS: Gray Television Election Letter

Yes . . . and essentially the simultaneous carriage obligation was what made CBS comfortable granting the waiver. If we had insisted upon the right to grant consent and relief from the simultaneous carriage obligation, the answer would have been a hard "No."

From: "sfriedman@cinnamonmueller.com" <sfriedman@cinnamonmueller.com>
Date: Friday, May 17, 2019 at 11:06 AM
To: Rob Folliard <Robert.Folliard@gray.tv>
Subject: RE: Telepex/Diamondhead, MS: Gray Television Election Letter

Rob:

Were you able to discuss with CBS whether you could grant consent in this instance without the corresponding "in-DMA" station requirement?

Regards,
Scott Friedman
Cinnamon Mueller
1714 Deer Tracks Trail, Suite 230
St. Louis, MO 63131
(314) 462-9000 (office)
(608) 469-3596 (cell)
sfriedman@cinnamonmueller.com



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EXHIBIT 3

Meltzer, Ari

From: robert.folliard@gray.tv
Sent: Monday, June 3, 2019 3:55 PM
To: sfriedman@cinnamonmueller.com
Subject: FW: Telepex/Diamondhead, MS: Gray Television Election Letter

Scott -- You can see CBS's position below. We have authority to grant consent subject to the simultaneous carriage of WWL-TV.

-Rob

From: John Bagwell <john.bagwell@cbs.com>
Date: Monday, June 3, 2019 at 2:47 PM
To: Rob Folliard <Robert.Folliard@gray.tv>
Subject: RE: Telepex/Diamondhead, MS: Gray Television Election Letter

Rob,

As previously noted, CBS is willing to permit WLOX-TV to grant retransmission consent with regard to the CBS Network Programs in WLOX-TV's broadcast stream to MVPD TV households located in Diamondhead, MS pursuant to the terms of the station's CBS Network Affiliation Agreement, including the simultaneous retransmission of WWL-TV, the CBS affiliate licensed to the New Orleans DMA.

Best regards,

John

John W. Bagwell
SVP & Assoc. General Counsel
CBS Television
212-975-8730

From: Robert Folliard <Robert.Folliard@gray.tv>
Sent: Thursday, May 30, 2019 8:23 PM
To: Bagwell, John <john.bagwell@cbs.com>
Subject: FW: Telepex/Diamondhead, MS: Gray Television Election Letter

<External Email>

John

As a follow up to our conversations a few weeks ago regarding the new cable system that C-Spire/Telepex is building in Diamondhead, Mississippi, as you can see below, C-Spire has asked that we ask CBS to reconsider its simultaneous carriage provision in our affiliation agreement solely with respect to their Diamondhead system, so we can grant consent to C-Spire to carry WLOX-D2 in Diamondhead without also simultaneously carrying WWL-TV from New Orleans.

C-Spire has always been a good partner of ours in Mississippi, so to the extent an accommodation is possible in this circumstance where the FCC has granted a market modification, we would certainly appreciate it.

In any event, thank you for considering our request again. If you have questions, give me a call.

-Rob



Robert J. Folliard, III

Gray Television, Inc.

Vice President – Government Relations & Distribution

4370 Peachtree Road, NE

Atlanta, GA 30319

Phone: 202.750.1585

Email: robert.folliard@gray.tv

Website: www.gray.tv

From: "sfriedman@cinnamonmueller.com" <sfriedman@cinnamonmueller.com>

Date: Thursday, May 30, 2019 at 2:29 PM

To: Rob Folliard <Robert.Folliard@gray.tv>

Subject: Re: Telepex/Diamondhead, MS: Gray Television Election Letter

Rob:

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Thanks again for your help.

Regards,

Scott Friedman

Cinnamon Mueller

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sfriedman@cinnamonmueller.com



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From: Robert Folliard <Robert.Folliard@gray.tv>
Date: Friday, May 17, 2019 at 10:10 AM
To: Scott Friedman <sfriedman@cinnamonmueller.com>
Subject: Re: Telepex/Diamondhead, MS: Gray Television Election Letter

Yes . . . and essentially the simultaneous carriage obligation was what made CBS comfortable granting the waiver. If we had insisted upon the right to grant consent and relief from the simultaneous carriage obligation, the answer would have been a hard "No."

From: "sfriedman@cinnamonmueller.com" <sfriedman@cinnamonmueller.com>
Date: Friday, May 17, 2019 at 11:06 AM
To: Rob Folliard <Robert.Folliard@gray.tv>
Subject: RE: Telepex/Diamondhead, MS: Gray Television Election Letter

Rob:

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Regards,
Scott Friedman
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